



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF T-T-N-

DATE: NOV. 4, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Vietnam, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(g) of the Act, 8 U.S.C. § 1182(g). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director determined that the Applicant was statutorily inadmissible under section 212(a)(1)(A)(iv) of the Act as a drug abuser or addict, for which no waiver is available. The Director denied the Form I-601 accordingly.

On appeal, the Applicant submits a letter contesting inadmissibility and medical documentation in support. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(1)(A) of the Act provides, in pertinent part:

In General: Any alien... (iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

Section 212(a)(1)(B) of the Act provides:

(1) Waiver Authorized – For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Section 212(g) of the Act provides, in pertinent part:

The [Secretary] may waive the application of-

....

(1) Subsection (a)(1)(A)(i) in the case of any alien who –

....

- (2) Subsection (a)(1)(A)(ii) in the case of any alien –  
.....
- (3) Subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record establishes that a panel physician found that the Applicant had a Class A medical condition rendering him inadmissible under section 212(a)(1)(A)(iv) of the Act as a drug addict or abuser. There is nothing in the record indicating that this finding has been reversed. Only medical examiners, such as panel physicians, civil surgeons, or other physicians designated by the Director of Health and Human Services, may make determinations of Class A medical conditions. *See* 42 C.F.R. § 34. Neither the Act nor regulations state that U.S. Citizenship and Immigration Services has jurisdiction to overturn a finding made by an authorized medical examiner.<sup>1</sup>

Although the Act provides for waivers of inadmissibility of sections 212(a)(1)(A)(i), 212(a)(1)(A)(ii), and 212(a)(1)(A)(iii) of the Act, there is no waiver of inadmissibility for section 212(a)(1)(A)(iv) of the Act. Accordingly, the Applicant is statutorily inadmissible under section 212(a)(1)(A)(iv) of the Act, and no waiver is available.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed

Cite as *Matter of T-T-N-*, ID# 14161 (AAO Nov. 4, 2015)

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<sup>1</sup> The Applicant submitted medical documentation from August 2014 in support of the appeal. As explained above, we do not have jurisdiction to reverse an inadmissibility finding pursuant to section 212(a)(1)(A)(iv) of the Act. 9 FAM 40.11 N11 indicates that for cases previously refused under 212(a)(1)(A)(iv) due to a Class A medical finding, as is the case here, if the last refusal was more than one year ago, then the applicant must reapply for a visa, complete a new medical examination with a panel physician and pay all applicable fees. 9 FAM 40.11 N11.1 (d)(2).